

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson**

Plaintiff,

v.

**32 Gallon Investments, LLC**, a  
California Limited Liability  
Company

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of 32 Gallon Investments, LLC, a California Limited Liability Company; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant 32 Gallon Investments, LLC owned the real property located at or about 2937 Union Ave, San Jose, California, upon which the business "Aloha Health Center" operates, in August 2020.

1       3. Defendant 32 Gallon Investments, LLC owns the real property located  
2 at or about 2937 Union Ave, San Jose, California, upon which the business  
3 “Aloha Health Center” operates, currently.

4       4. Plaintiff does not know the true names of Defendants, their business  
5 capacities, their ownership connection to the property and business, or their  
6 relative responsibilities in causing the access violations herein complained of,  
7 and alleges a joint venture and common enterprise by all such Defendants.  
8 Plaintiff is informed and believes that each of the Defendants herein is  
9 responsible in some capacity for the events herein alleged, or is a necessary  
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
11 the true names, capacities, connections, and responsibilities of the Defendants  
12 are ascertained.

13  
14       **JURISDICTION & VENUE:**

15       5. The Court has subject matter jurisdiction over the action pursuant to 28  
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
19 of action, arising from the same nucleus of operative facts and arising out of  
20 the same transactions, is also brought under California’s Unruh Civil Rights  
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22       7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
23 founded on the fact that the real property which is the subject of this action is  
24 located in this district and that Plaintiff's cause of action arose in this district.

25  
26       **FACTUAL ALLEGATIONS:**

27       8. Plaintiff went to Aloha Health Center in August 2020 with the intention  
28 to avail himself of its services motivated in part to determine if the defendants

1 comply with the disability access laws.

2 9. Aloha Health Center is a facility open to the public, a place of public  
3 accommodation, and a business establishment.

4 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed  
5 to provide wheelchair accessible parking in conformance with the ADA  
6 Standards as it relates to wheelchair users like the plaintiff.

7 11. Aloha Health Center provides parking to its customers but fails to  
8 provide wheelchair accessible parking.

9 12. One problem that plaintiff encountered is that there was no accessible  
10 parking whatsoever in the parking lot.

11 13. Plaintiff believes that there are other features of the parking that likely  
12 fail to comply with the ADA Standards and seeks to have fully compliant  
13 parking available for wheelchair users.

14 14. On information and belief the defendants currently fail to provide  
15 wheelchair accessible parking.

16 15. Additionally, on the date of the plaintiff's visit, the defendants failed to  
17 provide wheelchair accessible paths of travel in conformance with the ADA  
18 Standards as it relates to wheelchair users like the plaintiff.

19 16. Aloha Health Center provides paths of travel to its customers but fails to  
20 provide wheelchair accessible paths of travel.

21 17. The problem that plaintiff encountered is that there were unramped  
22 steps leading to the entrance at Aloha Health Center.

23 18. Plaintiff believes that there are other features of the paths of travel that  
24 likely fail to comply with the ADA Standards and seeks to have fully compliant  
25 paths of travel available for wheelchair users.

26 19. On information and belief the defendants currently fail to provide  
27 wheelchair accessible paths of travel.

28 20. These barriers relate to and impact the plaintiff's disability. Plaintiff

1 personally encountered these barriers.

2 21. As a wheelchair user, the plaintiff benefits from and is entitled to use  
3 wheelchair accessible facilities. By failing to provide accessible facilities, the  
4 defendants denied the plaintiff full and equal access.

5 22. The failure to provide accessible facilities created difficulty and  
6 discomfort for the Plaintiff.

7 23. The defendants have failed to maintain in working and useable  
8 conditions those features required to provide ready access to persons with  
9 disabilities.

10 24. The barriers identified above are easily removed without much  
11 difficulty or expense. They are the types of barriers identified by the  
12 Department of Justice as presumably readily achievable to remove and, in fact,  
13 these barriers are readily achievable to remove. Moreover, there are numerous  
14 alternative accommodations that could be made to provide a greater level of  
15 access if complete removal were not achievable.

16 25. Plaintiff will return to Aloha Health Center to avail himself of its  
17 services and to determine compliance with the disability access laws once it is  
18 represented to him that Aloha Health Center and its facilities are accessible.  
19 Plaintiff is currently deterred from doing so because of his knowledge of the  
20 existing barriers and his uncertainty about the existence of yet other barriers  
21 on the site. If the barriers are not removed, the plaintiff will face unlawful and  
22 discriminatory barriers again.

23 26. Given the obvious and blatant nature of the barriers and violations  
24 alleged herein, the plaintiff alleges, on information and belief, that there are  
25 other violations and barriers on the site that relate to his disability. Plaintiff will  
26 amend the complaint, to provide proper notice regarding the scope of this  
27 lawsuit, once he conducts a site inspection. However, please be on notice that  
28 the plaintiff seeks to have all barriers related to his disability remedied. See

1 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 2 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 3 disability removed regardless of whether he personally encountered them).

4  
 5  
 6 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 7 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 8 Defendants.) (42 U.S.C. section 12101, et seq.)

9 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 10 again herein, the allegations contained in all prior paragraphs of this  
 11 complaint.

12 28. Under the ADA, it is an act of discrimination to fail to ensure that the  
 13 privileges, advantages, accommodations, facilities, goods and services of any  
 14 place of public accommodation is offered on a full and equal basis by anyone  
 15 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 16 § 12182(a). Discrimination is defined, inter alia, as follows:

- 17 a. A failure to make reasonable modifications in policies, practices,  
 18 or procedures, when such modifications are necessary to afford  
 19 goods, services, facilities, privileges, advantages, or  
 20 accommodations to individuals with disabilities, unless the  
 21 accommodation would work a fundamental alteration of those  
 22 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 23 b. A failure to remove architectural barriers where such removal is  
 24 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 25 defined by reference to the ADA Standards.
- 26 c. A failure to make alterations in such a manner that, to the  
 27 maximum extent feasible, the altered portions of the facility are  
 28 readily accessible to and usable by individuals with disabilities,

including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

29. When a business provides parking for its customers, it must provide accessible parking.

30. Here, accessible parking has not been provided in conformance with the ADA Standards.

31. When a business provides paths of travel, it must provide accessible paths of travel.

32. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

33. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

34. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

35. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

**II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

36. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,

1 that persons with disabilities are entitled to full and equal accommodations,  
2 advantages, facilities, privileges, or services in all business establishment of  
3 every kind whatsoever within the jurisdiction of the State of California. Cal.  
4 Civ. Code § 51(b).

5 37. The Unruh Act provides that a violation of the ADA is a violation of the  
6 Unruh Act. Cal. Civ. Code, § 51(f).

7 38. Defendants' acts and omissions, as herein alleged, have violated the  
8 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
9 rights to full and equal use of the accommodations, advantages, facilities,  
10 privileges, or services offered.

11 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
12 discomfort or embarrassment for the plaintiff, the defendants are also each  
13 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
14 (c).)

15 40. Although the plaintiff encountered frustration and difficulty by facing  
16 discriminatory barriers, even manifesting itself with minor and fleeting  
17 physical symptoms, the plaintiff does not value this very modest physical  
18 personal injury greater than the amount of the statutory damages.

19  
20 **PRAYER:**

21 Wherefore, Plaintiff prays that this Court award damages and provide  
22 relief as follows:

23 1. For injunctive relief, compelling Defendants to comply with the  
24 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
25 plaintiff is not invoking section 55 of the California Civil Code and is not  
26 seeking injunctive relief under the Disabled Persons Act at all.

27 2. Damages under the Unruh Civil Rights Act, which provides for actual  
28 damages and a statutory minimum of \$4,000 for each offense.

1           3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3  
4 Dated: November 22, 2020      CENTER FOR DISABILITY ACCESS

5  
6 By: 

7  
8 Amanda Seabock, Esq.  
Attorney for plaintiff